

**SUMMARY FOR DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND RELATED SERVICES
2.00 DEFINITIONS
and
5.00 FREE AND APPROPRIATE PUBLIC EDUCATION (FAPE)**

Amendments to these sections of the special education Rules are necessary as a result of Act 874 of 2017. They also contain non-substantive edits.

Section 2.7.1 and Section 5.01.1 are amended to incorporate the language added to Ark. Code Ann. § 6-41-205 by Act 874 of 2017, clarifying the age range for providing a free and appropriate education to a child with a disability.

Section 2.30 is amended to remove unnecessary language.

Various definitions in Section 2.00 were removed because they were outdated, they were no longer required by federal law, or were not used in other sections of the rule.

No other substantive changes were made. Various other sections are changed to typing or grammatical errors.

CHANGES MADE AFTER PUBLIC COMMENT PERIOD

Section 2.25 definition of "equipment" has been changed back to the original definition.

**ARKANSAS DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND RELATED SERVICES
2.0 DEFINITIONS**

July 2008 _____

2.1 ADVERSE AFFECT ON EDUCATIONAL PERFORMANCE

Adverse affect on educational performance means the effect on the child that an impairment identified in 34 CFR 300.8(c)(1) – (13) and §6.08 of these regulations must have in order to establish eligibility for special education and related services under Part B of the IDEA. In the consideration of the effect of the child’s disability on his or her overall educational performance, criteria must include not only curriculum/ developmental areas, but also affective, behavioral, and physical characteristics or professional judgment of a multidisciplinary team.

2.2 ADMINISTRATIVE CASE MANAGEMENT

Administrative case management activities include the purchase by an LEA of appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of children with disabilities.

2.3 ARKANSAS DEPARTMENT OF EDUCATION

The Arkansas Department of Education (ADE) is the State educational agency (SEA) designated in State law as responsible for the State supervision of public elementary and secondary schools.

2.4 ASSISTIVE TECHNOLOGY DEVICE

Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.

2.5 ASSISTIVE TECHNOLOGY SERVICE

Assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device.
The term includes -

- 2.5.1 The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child’s customary environment;

- 2.5.2 Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
- 2.5.3 Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
- 2.5.4 Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- 2.5.5 Training or technical assistance for a child with a disability or, if appropriate, that child’s family; and
- 2.5.6 Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

2.6 AT NO COST

The term at no cost, within the definition of special education, means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

2.7 CHARTER SCHOOL

Charter School has the meaning given the term in section 5210(1) of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 6301 et seq. (ESEA).

2.8 CHILD WITH A DISABILITY

2.8.1 The term child with a disability means a child, from three (3) years of age until the end of the school year in which the child turns twenty-one (21) years of age, evaluated in accordance with 34 CFR 300.304 - 300.311 and §6.00 of these regulations as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), serious emotional disturbance (referred to in this part as “emotional disturbance”), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

2.8.1.1 Subject to § 2.08.1.2 of these regulations, if it is determined, through an appropriate evaluation under these regulations, that a child has one of the disabilities identified in § 2.08.1 but only needs a related service and not special education, the child is not a child with a disability under these regulations.

2.8.1.2 If the related service required by the child is considered to be special education rather than a related service under State standards, the child would be determined to be a child with a disability under § 2.08.1.

2.8.2 The term child with a disability for children aged three (3) to five (5) includes a child -

2.8.2.1 Who is experiencing developmental delays -

A. As defined by the State in Part II, "Eligibility Criteria for Children with Disabilities, Ages 3-5," Noncategorical, of the document Special Education Eligibility Criteria and Program Guidelines for Children with Disabilities, Ages 3-21, (ADE, 2008); and

B. As measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

2.8.2.2 Who, by reason thereof, needs special education and related services.

2.9 CODE OF FEDERAL REGULATIONS

The Code of Federal Regulations (CFR) refers to the official system of documentation containing codified Federal rules and regulations implementing specified Federal statutes. Such rules and regulations, as codified and adopted, have the force of law.

2.10 COMBINATION RESOURCE SERVICES/SPECIAL CLASS SERVICES

Combination resource services/special class services means instruction provided in this service setting is primarily one of resource services. However, because of the need for special class services on a very limited basis, up to three (3) students may receive special education in excess of sixty percent (60%) of the instructional day within a resource setting. Careful consideration must be given to the number and needs of students receiving special class services within a resource setting to ensure that services to all students are programmatically sound.

2.11 COMBINATION SPECIAL CLASS SERVICES/RESOURCE SERVICES

Combination special class services/resource services means instruction provided in this service setting is primarily one of special class services. However, because of the need for resource services on a limited basis, up to five (5) students may receive resource services within a special class setting. Careful consideration must be given to the number and needs of students receiving resource services within a special class setting to ensure that services to all students are programmatically sound.

2.12 CONSENT

Consent means that -

- 2.12.1 The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;
- 2.12.2 The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
- 2.12.3 The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.
 - 2.12.3.1 If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

2.13 CORE ACADEMIC SUBJECTS

The term core academic subjects means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history and geography.

2.14 DATA-BASED PROBLEM-SOLVING AND FUNCTIONAL ASSESSMENT

Data-based Problem-Solving is a systematic process based on the scientific method that can be used (a) to make decisions about the effectiveness of instructional programs, (b) to identify the need for and specify the focus areas for academic and/or behavioral interventions, and (c) to formatively and summatively evaluate intervention goals and outcomes. *Data-based* Problem-Solving has four primary steps: Problem Identification and Description, Problem Analysis and Functional Assessment, Intervention Development and Implementation, and Formative and Summative Evaluation.

Functional Assessment, which occurs within the context of Data-based Problem-Solving, involves (a) the review of existing records and other sources of information, (b) diagnostic and historical interviews, (c) structured academic or behavioral observations, and (d) authentic, criterion-referenced, or norm-referenced tests. The goal of Functional Assessment is to determine why a specific problem or situation is occurring so that a strategic intervention can be directly linked to the assessment and solve or resolve the problem.

Relationship to Response-to-Intervention: Response-to-Intervention is an inherent part of the Data-based Problem-Solving process in that, when a strategic intervention is implemented with a student, evaluation procedures must be in place to determine how well the student "responded to the intervention". Given a positive response, the intervention will either be maintained or faded out over time. Given a negative response, analysis must determine if the intervention was improperly selected, implemented, or evaluated; or if, simply, more time to allow the intervention to be successful is needed.

2.15 DAY; BUSINESS DAY; SCHOOL DAY

The term -

- 2.15.1 Day means calendar day unless otherwise indicated as business day or school day;
- 2.15.2 Business day means Monday through Friday, except for Federal and State holiday (unless holidays are specifically included in the designation of business day);
- 2.15.3 School day means any day, including a partial day, that children are in attendance at school for instructional purposes. The term school day has the same meaning for all children in school, including children with and without disabilities.

2.16 DESTRUCTION

Destruction for the purpose of these regulations means physical destruction of information or removal of personal identifiers from information so that the information is no longer personally identifiable.

2.17 DISCREPANCY MODEL FOR THE ASSESSMENT OF LEARNING DISABILITIES (ARKANSAS DEFINITION)

According to the psychometric standard established by the Arkansas Department of Education Special Education Unit, a severe discrepancy exists between a student's intellectual ability and achievement when the level of severity is equal to or greater than 1.75 or more standard deviations (S.D.) at the fifty percent (50%) or above level of probability as determined by regression analysis. The determination of a severe discrepancy does not necessarily mean that there is a specific learning disability as other factors may contribute to a student's lowered academic performance. Conversely, there may be rare cases where a child has a specific learning disability but does not clearly demonstrate this upon use of a regression analysis standard. Local education agencies in Arkansas are not required to use this model in determining specific learning disabilities.

2.18 EARLY INTERVENING SERVICES

Early intervening services means coordinated, early intervening services, which may include interagency financing structures for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.

2.19 EARLY INTERVENING SERVICES ACTIVITIES

Means activities implemented and coordinated by an LEA that include -

- 2.19.1 Professional development (which may be provided by entities other than LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and where appropriate, instruction on the use of adaptive and instructional software; and
- 2.19.2 Providing educational and behavioral evaluations, services, and supports including scientifically based literacy instruction.

2.20 EDUCATION RECORDS

2.20.1 Education records are broadly defined as -

2.20.1.1 Those records, files, documents, and other materials, which-

- A. Contain information directly related to the student; and
- B. Are maintained by an educational agency or institution or by a person acting for such agency or institution.

2.20.2 Educational records means the type of records covered under the definition of “education records” in 34 CFR part 99 [the regulations implementing the Family Educational Rights and Privacy Act of 1974 (FERPA)]. According to interpretation provided by the Family Policy Compliance Office (FPCO) which administers FERPA -

2.20.2.1 Any record, such as a permanent record, report card, a student’s work, or a teacher’s grade book, is an “education record” under FERPA if it is maintained by a school and is directly related to the student.

2.20.2.2 A psychological evaluation or assessment, as well as test protocol(s), would be education records under FERPA if they contain information that is “directly related” to the student.

2.20.2.3 Any test protocols or test question booklets which do not contain information directly related to the student are not education records under FERPA.

2.20.3 Records maintained by an agency or institution that are not “directly related” to the student are not “educational records” under FERPA, and parents do not have a right to inspect and review such records under FERPA.

2.20.4 FERPA requires that an educational agency or institution respond to reasonable requests for explanations and interpretations of education records, such as test answer sheets not accompanied by the question booklets.

2.20.4.1 A school district should, upon request -

- A. Provide an opportunity for a parent to review the education records; and
- B. Provide any explanations and interpretations necessary, which may include -
 - 1. The interpretation of standardized test scores, such as reviewing the test questions with the parent.

2.21 EDUCATIONAL INTERPRETER

An educational interpreter is a person who performs conventional interpreting tasks and who ~~has special skills~~ holds appropriate credentials and licensure relative to interpreting in educational settings. ~~In connection with deaf individuals,~~ An educational interpreter is a person who facilitates communication between a deaf ~~person~~ individual and a hearing individual by ~~translating interpreting~~ spoken language to a manual language form or otherwise, and vice-versa.

2.22 EDUCATIONAL SERVICE AGENCY (ESA)

- 2.22.1 Means a regional public multiservice agency -
 - 2.22.1.1 Authorized by State law to develop, manage, and provide services or programs to LEAs; and
 - 2.22.1.2 Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary and secondary schools of the State;
- 2.22.2 Includes any other public institution or agency having administrative control and direction over a public elementary or secondary school; and
- 2.22.3 Includes entities that meet the definition of intermediate educational unit in Section 602(23) of IDEA as in effect prior to June 4, 1997.

2.23 ELIGIBILITY FOR SPECIAL EDUCATION SERVICES

Eligibility for special education services means that a child is determined eligible upon completion of the administration of assessments and other evaluation measures by a group of qualified professionals and the parent of the child, as a child with a disability, in accordance with the Individuals with Disabilities Education Act (IDEA) and these regulations. The disability must result in

adverse effect on educational performance and the corresponding need for special education services.

2.24 ELEMENTARY SCHOOL

Elementary School means a non-profit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under State law.

2.25 EQUIPMENT

Equipment means -

2.25.1 *Machinery, utilities, and built-in equipment and any necessary enclosures or structures to house the machinery, utilities, or equipment; and*

2.25.2 *All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.*

~~2.25.1 Equipment is defined as an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of the capitalization level established by the government unit for financial statement purposes, or \$5,000 per unit.~~

2.26 EVALUATION

Evaluation means procedures used in accordance with 34 CFR 300.304 - 300.311 and §6.00 of these regulations to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered to or procedures used with all children in a school, grade or class.

~~2.27 EXCESS COSTS~~

~~Excess costs means those costs that are in excess of the average annual per-student expenditure in an LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting—~~

~~2.27.1 Amounts received—~~

~~2.27.1.1 Under Part B of this Act;~~

~~2.27.1.2 Under Part A of title I of the ESEA; and~~

~~2.27.1.3 Under Parts A and B of title III of the ESEA; and~~

~~2.27.2 Any State or local funds expended for programs that would qualify for assistance under any of the parts described in 2.27.1 of this section, but excluding any amounts for capital outlay or debt service.~~

2.287 EXTENDED SCHOOL YEAR SERVICES

As used in these regulations, the term extended school year services (ESY) means special education and related services that -

2.287.1 Are provided to a child with a disability -

2.287.1.1 Beyond the normal school year of the public agency;

2.287.1.2 In accordance with the child's IEP; and

2.287.1.3 At no cost to the parents of the child.

2.287.2 Meet the standards of the SEA.

2.298 FREE APPROPRIATE PUBLIC EDUCATION

Free appropriate public education or FAPE means special education and related services that -

2.298.1 Are provided at public expense, under public supervision and direction, and without charge;

2.298.2 Meet the standards of the SEA, including the requirements of Part B of IDEA, as amended;

2.298.3 Include an appropriate preschool, elementary school, or secondary school education in Arkansas; and

2.298.4 Are provided in conformity with an individualized education program (IEP) that meets the requirements of 34 CFR 300.320 - 300.324 and §8.00 of these regulations.

2.30 "HE" OR "HIS"

~~For purposes of these regulations, the terms "he" or "his" shall mean both the~~

male and female gender.

2.31 HIGHLY QUALIFIED SPECIAL EDUCATION TEACHERS

~~2.31.1 Requirements for special education teachers teaching core academic subjects. For any public elementary or secondary school special education teacher teaching core academic subjects, the term highly qualified has the meaning given the term in section 9101 of the ESEA and 34 CFR 200.56, 34 CFR 300.18, and §26.00 of these regulations, except that the requirements for highly qualified also—~~

~~2.31.1.1 Include the requirements described in 2.31.2 of this section; and~~

~~2.31.1.2 Include the option for teachers to meet the requirements of section 9101 of the ESEA by meeting the requirements of §§2.31.3 and 2.31.4.~~

~~2.31.2 Requirements for special education teachers in general.~~

~~2.31.2.1 When used with respect to any public elementary school or secondary school special education teacher teaching in a State, highly qualified requires that—~~

~~A. The teacher has obtained full State certification as a special education teacher (including certification obtained through alternate routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, highly qualified means that the teacher meets the State's public charter school law;~~

~~B. The teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and~~

~~C. The teacher holds at least a bachelor's degree.~~

~~2.31.2.2 A teacher will be considered to meet the standard in 2.31.2.1A of this section if that teacher is participating in an alternative route to special~~

~~education certification program under which~~

~~A. The teacher –~~

- ~~1. Receives high-quality professional development that was sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;~~
- ~~2. Participates in a program of intensive supervision that consisted of structured guidance and regular ongoing support for teachers or a teacher-mentoring program;~~
- ~~3. Assumes functions as a teacher only for a specified period of time not to exceed three years; and~~
- ~~4. Demonstrates satisfactory progress toward full certification as prescribed by the State; and~~

~~B. The State ensures, through its certification and licensure process, that the provisions in 2.31.2.2A of this section are met.~~

~~2.31.2.3 Any public elementary school or secondary school special education teacher teaching in a State, who is not teaching a core academic subject, is highly qualified if the teacher meets the requirements in §2.31.2.1 or the requirements in 2.31.2.1C and 2.31.2.2 of this section.~~

~~2.31.3 Requirements for special education teachers teaching to alternate achievement standards. When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under 34 CFR 200.1(d), highly qualified means the teacher, whether new or not new to the profession, may either –~~

~~2.31.3.1 Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56 for any elementary, middle, or secondary school teacher who is new or~~

not new to the profession; or

~~2.31.3.2 — Meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those standards, as determined by the State.~~

~~2.31.4 — Requirements for special education teachers teaching multiple subjects. Subject to 2.31.5 of this section, when used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, highly qualified means that the teacher may either —~~

~~2.31.4.1 — Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56(b) or (c);~~

~~2.31.4.2 — In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under 34 CFR 200.56(e) which may include a single high objective uniform State standard of evaluation (HOUSSE) covering multiple subjects; or~~

~~2.31.4.3 — In the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 CFR 200.56(e), which may include a single HOUSSE covering multiple subjects.~~

~~2.31.5 — Separate HOUSSE standards for special education teachers. Provided that any adaptations of the State's HOUSSE would not establish a lower standard for the content knowledge requirements for special education teachers and meets all the requirements for a~~

~~HOUSSE for regular education teachers—~~

~~2.31.5.1 — A State may develop a separate HOUSSE for special education teachers; and~~

~~2.31.5.2 — The standards described in 2.31.5.1 of this section may include single HOUSSE evaluations that cover multiple subjects.~~

~~2.31.6 — Rule of construction. Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an SEA or LEA employee to be highly qualified, or to prevent a parent from filing a complaint under 34 CFR 300.151 through 300.153 about staff qualifications with the SEA as provided for under this part.~~

~~2.31.7 — Applicability of definition to ESEA and clarification of new special education teacher.~~

~~2.31.7.1 — A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA.~~

~~2.31.7.2 — For purposes of 34 CFR 300.18(d)(3), a fully certified regular education teacher who subsequently becomes fully certified or licensed as a special education teacher is a new special education teacher when first hired as a special education teacher.~~

~~2.31.8 — Private school teachers not covered. The requirements in this section do not apply to teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by LEAs to provide equitable services to parentally placed private school children with disabilities under 34 CFR 300.138.~~

2.3229 HOMELESS CHILDREN

Homeless children has the meaning given the term homeless children and youths in section 725 (42 U.S.C. 1143a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 et seq.

2.3330 INCLUDE

The term include means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

2.3431 INDEPENDENT EDUCATIONAL EVALUATION

Independent educational evaluation (IEE) means an evaluation conducted by a qualified examiner who is not employed by the local education agency or other public agency responsible for the education of the child in question.

2.3532 INDIRECT SERVICES

Indirect services means those services provided by a qualified professional, commonly termed “consulting teacher,” whose primary role is to consult with general and/or special education teachers regarding the modification and/or adaptation of instruction for specific students with disabilities. The consulting teacher may provide limited direct instruction to students.

2.3633 INTEGRATED CLASSROOM

Integrated classroom means a general education classroom in which instruction is provided to general and special education students for the entire instructional day by a teacher dually licensed in general and special education. The maximum classroom composition is limited to 2/3 general education students and 1/3 students with disabilities. This classroom must have a half-time paraprofessional.

2.3734 INTERPRETING SERVICES

2.374.1 When used with respect to children who are deaf or hard of hearing, interpreting services means oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and Type Well; and

2.374.2 Special interpreting services for children who are deaf-blind.

2.3835 ITINERANT INSTRUCTION

Itinerant instruction means direct instruction which may be educational or therapeutic in nature provided to a student by qualified personnel. Itinerant instruction may be delivered in a variety of settings, including, general and special education classrooms, homes and hospitals, and other community settings. Such instruction may be provided daily or on a rotating schedule.

2.396 INDIVIDUALIZED EDUCATION PROGRAM

Individualized education program or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in a meeting in accordance with 34 CFR 300.320 - 300.324 and §8.00 of these regulations.

2.4037 INDIVIDUALIZED EDUCATION PROGRAM TEAM

The term individualized education program team or IEP Team means a group of individuals, as described in 34 CFR 300.321 and in §8.05 of these regulations, that is responsible for developing, reviewing, or revising an IEP for a child with a disability, including -

- 2.4037.1 The parents of the child;
- 2.4037.2 Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
- 2.4037.3 Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;
- 2.4037.4 A representative of the public agency who -
 - 2.4037.4.1 Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - 2.4037.4.2 Is knowledgeable about the general education curriculum; and
 - 2.4037.4.3 Is knowledgeable about the availability of resources of the public agency;
- 2.4037.5 An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in this section;
- 2.4037.6 At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
- 2.4037.7 Whenever appropriate, the child with a disability.

2.4138 INDIVIDUALS WITH DISABILITIES EDUCATION ACT

The Individuals with Disabilities Education Act, as amended, referred to as the IDEA, is a Federal statute that requires states to provide all eligible children with disabilities with a free appropriate public education, from infancy through age 21 years, consistent with State law age provisions for making education available.

2.4239 INSTITUTION OF HIGHER EDUCATION

2.4239.1 Institution of higher education –

2.4239.1.1 Has the meaning given the term in section 101 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1021 et seq. (HEA); and

2.4239.1.2 Also includes any community college receiving funds from the Secretary of the Interior under the Tribally Controlled Community College or University Assistance Act of 1978, 25 U.S.C. 1801 et seq.

2.4340 INSTRUCTIONAL DAY

Instructional day means the amount of time spent engaged in instructional activities. Generally, this excludes lunch, recess and nonacademic or extracurricular activity periods. However, when such activities are considered as special education instruction on a student's IEP, these activity periods may constitute part of the instructional day.

2.4441 LIMITED ENGLISH PROFICIENT

2.4441.1 Limited English proficient has the meaning given the term in section 9101(25) of the ESEA. The term, when used with respect to an individual, means an individual-

2.4441.1.1 Who is aged 3 through 21;

2.4441.1.2 Who is enrolled or preparing to reenroll in an elementary school or secondary school;

2.4441.1.3 Who was not born in the United States or whose native language is a language other than English;

2.4441.1.4 Who is a Native American or Alaska Native, or a native resident of the outlying areas; and

- 2.4441.1.5 Who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or
- 2.4441.1.6 Who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and
- 2.4441.1.7 Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual -
 - A. The ability to meet the State's proficient level of achievement on State assessments;
 - B. The ability to successfully achieve in classrooms where the language of instruction is English; or
 - C. The opportunity to participate fully in society.

2.452 LOCAL EDUCATIONAL AGENCY

Local educational agency (LEA) means a public board of education or other public authority legally constituted within the State of Arkansas for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools.

2.463 MEDIATION

Mediation means, as used in these regulations, procedures established and implemented to allow parties to disputes involving any matter under Part B of the IDEA, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.

2.474 MEETINGS

The term meetings, as defined within the IDEA and these regulations, includes those to which parents have the right to be provided notice of and which, generally, are scheduled in advance, to address the identification, evaluation, placement or the provision of FAPE to the child.

- 2.474.1 A meeting does not include -
 - 2.474.1.1 Informal or unscheduled conversations involving public agency personnel;
 - 2.474.1.2 Conversations on issues such as teaching methodology, lesson plans, or coordination of service provision; or
 - 2.474.1.3 Preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

2.485 NATIVE LANGUAGE

2.485.1 Native language, when used with respect to an individual who has limited English proficiency (LEP), means the following -

DRAFT

- 2.485.1.1 The language normally used by that individual or, in the case of a child, the language normally used by the parents of the child, except as provided in §2.485.1 of this part.
- 2.485.1.2 In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.

2.485.2 For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).

2.496 PARENT

- 2.496.1 The term parent means -
 - 2.496.1.1 A biological or adoptive parent of a child;
 - 2.496.1.2 A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;
 - 2.496.1.3 A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward

of the State);

2.496.1.4 An individual acting in the place of a biological or adoptive parent (including a grandparent or stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or

2.496.1.5 A surrogate parent who has been appointed in accordance with 34 CFR 300.519 and §15.00 of these regulations.

2.496.2 Except as provided in 2.496.3 of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under 2.496.1 of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

2.496.3 If a judicial decree or order identifies a specific person or persons under 2.496.1 of this section to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of this section.

2.5047 PARAPROFESSIONAL

A paraprofessional, in connection with special education, is a staff member other than a teacher who works directly with students with disabilities under the direct supervision of a teacher or other licensed professional, and who has received appropriate training pertaining to the tasks and activities he/she is asked to perform and who meets state-established qualification standards.

2.5148 PARTICIPATING AGENCY

2.5148.1 As used with regard to IEPs and agency responsibilities for transition services, participating agency means a State or other public agency, including a State vocational rehabilitation agency, other than the public agency responsible for a student's education, that is likely to be responsible for providing or paying for transition services to the student, therefore being financially and legally responsible.

2.5148.2 As used in connection with education records and confidentiality of information, participating agency means any agency or institution that collects, maintains, or uses personally identifiable

information, or from which information is obtained, under Part B of the IDEA.

2.5249 PERSONALLY IDENTIFIABLE

Personally identifiable means information that contains -

- 2.5249.1 The name of the child, the child’s parent, or other family member;
- 2.5249.2 The address of the child;
- 2.5249.3 A personal identifier, such as the child’s social security number or student number; or
- 2.5249.4 A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

2.530 PUBLIC AGENCY

Public agency includes the SEA, LEAs, ESAs, nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.

2.541 PUBLIC EXPENSE

Public expense means, as applied to an independent educational evaluation, that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with 34 CFR 300.502(a)(3)(iii) and §5.02 of these regulations.

2.552 PHYSICAL EDUCATION

The term physical education means -

- 2.552.1 The development of -
 - 2.552.1.1 Physical and motor fitness;
 - 2.552.1.2 Fundamental motor skills and patterns; and
 - 2.552.1.3 Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and

- 2.552.2 Includes special physical education, adapted physical education, movement education, and motor development.

2.563 POSITIVE BEHAVIORAL SUPPORTS

Positive Behavioral Supports (PBS) involves the application of behavior analysis to achieve socially important behavior change. PBS occurs (a) at the prevention level for all students in a school; (b) at the strategic intervention level for students who are not responding, from a social-emotional and behavioral perspective, to the prevention level; and (c) at the intensive service or crisis-management level for students who need multi-faceted and/or comprehensive behavioral or mental health services. PBS involves a planned and collaborative school-wide approach with a goal of establishing positive and supportive school environments that teach and reinforce students' prosocial behavior, holding students positively accountable for meeting established behavioral expectations, and maintaining a level of consistency throughout the implementation process. This goal is accomplished by using positive behavioral programs, strategies, and approaches.

2.574 QUALIFIED EXAMINER

A qualified examiner shall include any person who fits the description of an individual who is qualified to conduct some or all of the assessments listed in this document.

- 2.574.1 The licensed teacher or counselor who may administer tests which do not require special training, certification or licensure, i.e., achievement tests.

- 2.574.2 The educational examiner, licensed by the SEA, who may administer intellectual, academic, and/or behavior rating scales, and some language measures, but may not administer tests which measure personality or psychiatric traits.

- 2.574.3 The school psychology specialist, licensed by the SEA, who conducts multi-factored, psycho-educational evaluations/assessments. Such assessments of a student include consideration of personal and social adjustment within the educational environment, intelligence and scholastic aptitude, adaptive behavior, selected language and communication skills, academic achievement, sensory- and perceptual-motor functioning, environmental and cultural influences, and vocational aptitude and interests. School psychology specialists will assess only those areas, which are relevant and specific to educational programming and which enhance the academic and personal/social adjustment of a student within educational settings and systems.

- 2.574.4 The psychological examiner, licensed by the Arkansas Psychology Board, who may administer and interpret tests of mental abilities, aptitudes, interests, and personality characteristics, for such purposes as psychological evaluation or for educational or vocational selection, guidance or placement. The psychological examiner will conduct personality appraisal or classification only under qualified supervision as stipulated by the Arkansas Psychology Board.
- 2.574.5 The psychologist, licensed by the Arkansas Psychology Board, who may administer and interpret tests of mental abilities, aptitudes, interests and personality characteristics, for such purposes as psychological evaluation or educational and vocational selection, guidance or placement, over-all personality appraisal or classification, personality counseling, psychotherapy or personality adjustment.
- 2.574.6 The speech-language pathologist, either licensed by the SEA or licensed by the Arkansas Board of Examiners in Speech-Language Pathology and Audiology, who may conduct assessments of communicative abilities.
- 2.574.7 The licensed professional counselor, licensed by the Board of Examiners in Counseling, who may administer individualized intelligence tests providing he/she holds the Appraisal Specialization classification as stipulated by the Board of Examiners in Counseling.
- 2.574.8 The licensed associate counselor, licensed by the Board of Examiners in Counseling, who may administer individualized intelligence tests as stipulated by the Board of Examiners in Counseling. Associate counselors must practice under supervision for this specialization, as stipulated by the Board of Examiners in Counseling.
- 2.574.9 The student evaluator, who is either practicing as an intern or participating in a practicum, and is subsequently administering tests to complete requirements for certification or licensure. The following requirements apply when using a student evaluator -
- 2.574.9.1 The Informed Consent form signed by the parent must indicate the use of a student evaluator;
 - 2.574.9.2 The evaluation report must indicate that the evaluation was administered by a student evaluator;

- 2.574.9.3 The student evaluator must sign the evaluation report;
- 2.574.9.4 The supervisor of the student evaluator must review and sign the report, indicating the supervisor's licensure or certification status;
- 2.574.9.5 The student evaluator must abide by the rules, regulations and laws that pertain to the area of certification, licensure or field of study the student is pursuing.

2.574.10 The licensed teacher of the visually impaired, or a person who is qualified in Braille instruction as determined by the SEA, who at least once a year conducts an assessment of the educational progress of each student with a visual impairment. That assessment shall -

- 2.574.10.1 Address the student's need for Braille instruction, using procedures developed by the SEA, and specify the learning medium most appropriate for the student's educational progress;
- 2.574.10.2 Identify the student's strengths and weaknesses in Braille skills, when that medium is used for instruction; and
- 2.574.10.3 Identify appropriate and necessary related services and technologies for use in combination with Braille instruction. The results of the assessment shall be used in developing the student's IEP.

2.585 QUALIFIED PERSONNEL

Qualified personnel means personnel who have met SEA-approved or SEA-recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the individuals are providing special education or related services.

2.596 RELATED SERVICES

Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early

identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, and school nurse services, social work services in schools, and parent counseling and training. The specific services listed above are defined in 34 CFR 300.34 (Related Services).

2.596.1 Exception; services that apply to children with surgically implanted devices, including cochlear implants.

2.596.1.1 Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device.

2.596.1.2 Nothing in 2.596.1.1 of this section – Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in 2.59 of this section) that are determined by the IEP Team to be necessary for the child to receive FAPE.

2.596.1.3 Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or

2.596.1.4 Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in 34 CFR 300.113(b).

2.6057 RESOURCE SERVICES

Resource services consist of direct instruction provided by a special education teacher to students with disabilities. Individual students may receive resource services for a period of time not to exceed sixty percent (60%) of the instructional day.

2.6158 RESPONSE TO INTERVENTION (RtI)

Response to intervention is the practice of (1) providing high quality instruction/intervention matched to student needs and (2) using learning rate over time and level of performance to (3) make important educational decisions.

2.6259 SCHOOL-BASED DAY TREATMENT SERVICES

The term school-based day treatment services means a cooperative program which includes the provision of both education and mental health services for each participating student with emotional disturbance in a coordinated, therapeutic manner. This program is located on a school campus in an age-appropriate regular education school building. Instruction is provided by a full-time teacher who is licensed in an area of special education and, at a minimum, one full-time paraprofessional.

2.6360 SCIENTIFICALLY BASED RESEARCH

Section 9101 (37) of the federal Elementary and Secondary Education Act, as amended by the No Child Left Behind Act, defines scientifically based research as "research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs." The statute then explains that this kind of research: (1) Employs systematic, empirical methods that draw on observation or experiment; (2) Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn; (3) Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators; (4) Is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls evaluate the effects of the condition of interest, with a preference for random-assignment, experiments, or other designs to the extent that those designs contain within-condition or across-condition controls; (5) Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and (6) Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, scientific review.

2.641 SCHOOL HEALTH SERVICES AND SCHOOL NURSE SERVICES

School health services and school nurse services means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

2.652 SCREENING

Screening, for instructional purposes, is not evaluation. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

2.663 SECONDARY SCHOOL

Secondary school means a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

2.674 SERVICES PLAN

Services plan means a written statement that describes the special education and related services the LEA will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with 34 CFR 300.132, and is developed and implemented in accordance with 34 CFR 300.137 through 300.139.

2.685 SPECIAL CLASS SERVICES

Special class services means instruction provided by a special education teacher for students with disabilities whose programs require in excess of sixty percent (60%) of the instructional day as special education services.

2.696 SPECIAL DAY SCHOOL, PRIVATE

Special day school, private, means instruction provided by a special education teacher to students with disabilities whose programs require in excess of sixty percent (60%) of the instructional day in special education services, and whose special education services are delivered in a day school operated by a private agency.

2.7067 SPECIAL DAY SCHOOL, PUBLIC

Special day school, public, means instruction provided by a special education teacher to students with disabilities whose programs require in excess of sixty percent (60%) of the instructional day in special education services, and whose special education services are delivered in a day school operated by a public agency or an educational service agency.

2.7168 SPECIAL EDUCATION

2.7168.1 Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including –

2.7168.1.1 Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings;

and

2.7168.1.2 Instruction in physical education.

2.7168.2 The term includes each of the following, if the services otherwise meet the requirements of 2.7168.2.1 of this section -

2.7168.2.1 Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;

2.7168.2.2 Travel training; and

2.7168.2.3 Vocational education.

2.7269 SPECIALLY-DESIGNED INSTRUCTION

Specially designed instruction means adapting, as appropriate to the needs of an eligible child under these regulations, the content, methodology, or delivery of instruction -

2.7269.1 To address the unique needs of the child that result from the child's disability; and

2.7269.2 To ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children.

2.730 STATE EDUCATIONAL AGENCY

The term State educational agency (SEA) means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law. The SEA in Arkansas is the Arkansas Department of Education.

2.741 SUPPLEMENTARY AIDS AND SERVICES

Supplementary aids and services means aids, services, and other supports that are provided in regular education classes, or other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with 34 CFR 300.114 through 300.116 and §13.00 of these regulations.

2.752 TRANSITION SERVICES

2.752.1 Transition services means a coordinated set of activities for a child with a disability that -

2.752.1.1 Is designed to be within a results oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

2.752.1.2 Is based on the individual child's needs, taking into account the child's strengths, preferences and interests; and

2.752.1.3 Includes -

- A. Instruction;
- B. Related services;
- C. Community experiences;
- D. The development of employment and other post-school adult living objectives; and
- E. If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

2.752.2 Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a *related* service, if required to assist a child with a disability to benefit from special education.

2.763 TRAVEL TRAINING

Travel training means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to -

2.763.1 Develop an awareness of the environment in which they live; and

2.763.2 Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

2.774 VOCATIONAL EDUCATION

Vocational education means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

2.785 UNIVERSAL DESIGN

Universal design has the meaning given to the term in section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. 3002.

2.796 WARD OF THE STATE

2.796.1 General. ~~Subject to 2.79.1.4 of this section,~~ Ward of the State means a child who, as determined by the State where the child resides is -

2.796.1.1 A foster child;

2.796.1.2 A ward of the State; or

2.796.1.3 In the custody of a public child welfare agency.

2.796.2 Exception. Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent in 34 CFR 300.30 or §2.49 of these regulations.

**ARKANSAS DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND RELATED SERVICES
5.00 FREE APPROPRIATE PUBLIC EDUCATION (FAPE)
July 2008**

5.01 PROVISION OF FAPE

- 5.01.1 ~~Subject to 34 CFR 300.101 and this part,~~ The State of Arkansas must ensure that all children with disabilities, from three (3) years of age until the end of the school year in which the child turns twenty-one (21) years of age, aged 3 to 21 residing in the State have the right to and availability of FAPE, including children with disabilities who have been suspended or expelled from school. (See §11.00 of these regulations for specific FAPE requirements for children with disabilities who are suspended or expelled from school).
- 5.01.2 Each public agency must implement child find requirements as set out in §3.00 of these regulations (to identify, locate, and evaluate all children with disabilities).
- 5.01.3 The services provided to a child with disabilities under this part must address all of the child's identified special education and related services needs.
- 5.01.4 The services and placement needed by each child with a disability to receive FAPE must be based on the child's unique needs and not on the child's disability.
- 5.01.5 FAPE for children beginning at age 3.
- 5.01.5.1 Each State must ensure that -
- A. The obligation to make FAPE available to each eligible child residing in the State begins no later than the child's third birthday; and
 - B. An IEP is in effect for the child by that date, in accordance with 34 CFR 300.323(b).
- 5.01.5.2 If a child's third birthday occurs during the summer, the child's IEP Team must determine the date when services under the IEP will begin.

5.01.5.3 Limitation. The obligation to make FAPE available to all children with disabilities does not apply with respect to -

- A. Children with disabilities who are eligible under subpart H of the IDEA but who receive early intervention services under Part C of the Act.

5.01.6 Children advancing from grade to grade.

5.01.6.1 Each LEA must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.

5.01.6.2 The determination that a child described in paragraph 5.01.6.1 of this section is eligible under this part, must be made on an individual basis by the group responsible within the child's LEA for making eligibility determinations.

5.02 FAPE - METHODS AND PAYMENTS

Public agencies in the State of Arkansas may use whatever state, local, federal, and private sources of support are available in the State to meet the requirements of this part. Nothing herein relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability. Public agencies must ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.

5.03 RESIDENTIAL PLACEMENT

If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board must be at no cost to the parents of the child. (See §18.00 for specific regulations governing residential placements.)

5.04 ROUTINE CHECKING OF HEARING AIDS AND EXTERNAL COMPONENTS OF SURGICALLY IMPLANTED MEDICAL DEVICES

5.04.1 Hearing aids.

Each public agency must ensure that the hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

5.04.2 External components of surgically implanted medical devices.

5.04.2.1 Subject to paragraph 5.04.2.2 of this section, each public agency must ensure that the external components of surgically implanted medical devices are functioning properly.

5.04.2.2 For a child with a surgically implanted medical device who is receiving special education and related services under this part, a public agency is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).

5.05 PROGRAM OPTIONS

Each LEA or other public agency must take steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the school district or other public agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

5.06 NONACADEMIC SERVICES

5.06.1 Each LEA or other public agency must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

5.06.2 Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district or other public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

5.07 PHYSICAL EDUCATION

5.07.1 Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE, unless the public agency enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.

5.07.1.1 Regular Physical Education. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless -

- A. The child is enrolled full time in a separate facility; or
- B. The child needs specially designed physical education, as prescribed in the child's IEP.

5.07.1.2 Special Physical Education. If specially designed physical education is prescribed in a child's IEP, the LEA or other public agency responsible for the education of that child must provide the services directly or make arrangements for those services to be provided through other public or private programs.

5.07.1.3 Education in Separate Facilities. The LEA or other public agency responsible for the education of a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services in compliance with §§ 5.07.1 and 5.07.3 of this part.

5.08 ASSISTIVE TECHNOLOGY

5.08.1 Each LEA and other public agency must ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in 34 CFR 300.5 and 300.6, respectively, §§ 2.03 and 2.04 of these regulations, are made available to a child with a disability if required as part of the child's -

5.08.1.1 Special education under 34 CFR 300.36;

5.08.1.2 Related services under 34 CFR 300.34; or

5.08.1.3 Supplementary aids and services under 34 CFR 300.38 and 300.114(a)(2)(ii).

5.08.2 On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP Team determines that the child needs access to those devices in order to receive FAPE.

5.08.3 Evaluation for Assistive Technology. It is essential that decisions about a child's use of technology be made by a committee of professionals and family members to ensure a broad perspective of knowledge and experience. Committee members might necessarily include any of the following -

- 5.08.3.1 Child
- 5.08.3.2 Family members
- 5.08.3.3 Paraprofessionals/aides
- 5.08.3.4 Audiologists
- 5.08.3.5 Classroom teachers
- 5.08.3.6 Occupational therapists
- 5.08.3.7 Physical therapists
- 5.08.3.8 Physicians
- 5.08.3.9 Qualified examiners
- 5.08.3.10 Special educators
- 5.08.3.11 Speech-language pathologists

5.08.4 Assessment of Communication. For children who require assistive technology to communicate, assessment is an ongoing process. Initial assessment can only provide good baseline information and allow the assessment team to make reasonable hypotheses about where and how to begin intervention. The goals of communication assessment are to enable the team to -

5.08.4.1 Determine the current and future communication needs of the child and those interacting with him/her;

5.08.4.2 Identify the communication capabilities of the child and the child's partners, as well as the characteristics of his/her environments and tasks;

5.08.4.3 Reach a consensus on communication goals and prioritize these goals;

5.08.4.4 Develop and revise plans that allow these goals to be implemented and that increase the child's involvement in activities and interactions; and

5.08.4.5 Monitor the success and/or failure of intervention approaches, including the use of assistive technology.

5.08.5 Assessment Variables. The following variables should be considered when evaluating communication -

5.08.5.1 Child -

A. Child's needs

B. Capabilities and skills of the child

C. Personal goals and preferences

5.08.5.2 Communication Context/Environment -

A. Partners with whom the child will communicate

B. Social contexts

C. Physical contexts

- 5.08.5.3 Communication Activities -
 - A. Social interaction
 - B. Pragmatic/conversational skills
 - C. Participation in curriculum

- 5.08.5.4 Augmentative Communication Aids, Symbols, Techniques and Strategies -
 - A. Gestures
 - B. Vocalizations
 - C. Communication displays (symbols and vocabulary)
 - D. Devices
 - E. Means of accessing equipment
 - F. Communication strategies a child can use to accomplish communications tasks

- 5.08.5.5 Assessment Procedures. Assessment of communication abilities, which should take place in more than one environment, should include the following:
 - A. Record general observations
 - B. Complete checklists or other criterion-based instruments
 - C. Interview primary care providers
 - D. Review educational and medical records
 - E. Administer tests

5.09 EXTENDED SCHOOL YEAR SERVICES (ESY)

5.09.1 General.

- 5.09.1.1 Each LEA and other public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with § 5.09.1.2 of this part.
- 5.09.1.2 Extended school year services must be provided only if a child's IEP Team determines, on an individual basis, in accordance with 34 CFR 300.320 through 300.324, that the services are necessary for the provision of FAPE to the child.
- 5.09.1.3 In implementing the requirements of this part, the LEA or other public agency may not -
 - A. Limit extended school year services to particular categories of disabilities; or
 - B. Unilaterally limit the type, amount, or duration of those services.

5.09.2 Definition. As used in these regulations, the term extended school year services means special education and related services that -

- 5.09.2.1 Are provided to a child with a disability -
 - A. Beyond the normal school year of the LEA or other public agency;
 - B. In accordance with the child's IEP;
 - C. At no cost to the parents of the child; and
- 5.09.2.2 Meet the standards of the SEA. (See §19.00 of these regulations).

5.10 FAPE REQUIREMENTS FOR STUDENTS WITH DISABILITIES IN ADULT PRISONS

- 5.10.1 Except as provided in 34 CFR 300.102, the obligation to make FAPE available to all children with disabilities does not apply with respect to students aged 18 to 21 years to the extent that State law does not require that special education and related services under Part B of IDEA be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility -

- 5.10.1.1 Were not actually identified as being a child with a disability under 34 CFR 300.8; and
 - 5.10.1.2 Did not have an IEP under Part B of the IDEA.
- 5.10.2 The exception in paragraph 5.10.1 of this section does not apply to the children with disabilities, aged 18 through 21, who:
- 5.10.2.1 Had been identified as a child with a disability under 34 CFR 300.8 and had received services in accordance with an IEP, but who left school prior to their incarceration; or
 - 5.10.2.2 Did not have an IEP in their last education setting, but who had actually been identified as a child with a disability under 34 CFR 300.8.
- 5.10.3 Requirements that do not apply. The following requirements do not apply to children with disabilities who are convicted as adults under Arkansas state law and are incarcerated in adult prisons.
- 5.10.3.1 The requirements relating to participation of children with disabilities in general assessments found in § 612(a)(16) of the IDEA and 34 CFR 300.320(a)(6); and
 - 5.10.3.2 The requirements in 34 CFR 300.320(b) relating to transition planning and transition services, with respect to the children whose eligibility under Part B of IDEA will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.
- 5.10.4 Modifications of IEP or placement.
- 5.10.4.1 Subject to § 5.10.4.2 of this part, the IEP Team of a child with a disability, who is convicted as an adult under Arkansas state law and incarcerated in an adult prison, may modify the child's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

5.10.4.2 The requirements of 34 CFR 300.320 and 300.112, and §§ 8.02.1 and 8.08.1 of these regulations relating to IEPs, and 34 CFR ~~300.550(b)~~ 300.114 and §13.01 of these regulations relating to LRE, do not apply with respect to the modifications described in §5.10.4.1 of this part.

5.11 CHILDREN WITH DISABILITIES IN CHARTER SCHOOLS

5.11.1 Children with disabilities who attend public charter schools and their parents retain all rights under these regulations.

5.11.2 If the public charter school is an LEA, consistent with 34 CFR 300.28, that receives funding under 34 CFR 300.705, that charter school is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity. (See §27.00 of these regulations).

5.11.3 Charter schools that are public schools of the LEA.

5.11.3.1 In carrying out Part B of the Act and these regulations with respect to charter schools that are public schools of the LEA, the LEA must -

A. Serve children with disabilities attending those charter schools in the same manner as the LEA serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the LEA has a policy or practice of providing such services on the site to its other public schools; and

B. Provide funds under Part B of the Act to those charter schools -

1. On the same basis as the LEA provides funds to the LEA's other public schools, including proportional distribution based on relative enrollment of children with disabilities; and

2. At the same time as the LEA distributes other Federal funds to the LEA's other public schools, consistent with the State's charter school law.

5.11.4 If the public charter school is a school of an LEA that receives funding under 34 CFR 300.705 and includes other public schools -

5.11.4.1 The LEA is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity; and

5.11.4.2 The LEA must meet the requirements of 34 CFR 300.209 and §27.00 of these regulations.

5.11.5 If the public charter school is not an LEA receiving funding under 34 CFR 300.705, or a school that is part of an LEA receiving funding under 34 CFR 300.705, the SEA is responsible for ensuring that the requirements of this part are met.

5.11.6 Section 5.11.5 of this part does not preclude the ADE from assigning initial responsibility for ensuring the requirements of this part are met to another entity; however, the ADE must maintain the ultimate responsibility for ensuring compliance with this part, consistent with 34 CFR 300.149 and §27.00 of these regulations.

5.12 FAPE FOR CHILDREN SUSPENDED OR EXPELLED FROM SCHOOL

5.12.1 A child with a disability who is removed from the child's current placement pursuant to this section must -

5.12.1.1 Continue to receive educational services, as provided in 34 CFR 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

5.12.1.2 Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.

5.12.2 The services required by paragraph 5.12.1 of this section may be provided in an interim alternative educational setting.

5.12.3 A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.

5.12.4 After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under 34 CFR 300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, as provided in 34 CFR 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

5.12.5 If the removal is a change of placement under 34 CFR 300.536, the child's IEP Team determines appropriate services under 5.12.1 of this section.

5.13 STUDENTS WITH DISABILITIES WHO HAVE GRADUATED FROM HIGH SCHOOL WITH A REGULAR HIGH SCHOOL DIPLOMA [See 34 CFR 300.102 (a)(3)(i)]

5.13.1 The exception in § 5.13 does not apply to children who have graduated from high school but have not been awarded the regular high school diploma.

5.13.2 Graduation from high school with a regular diploma constitutes a change of placement, requiring written prior notice in accordance with 34 CFR 300.503 and § 9.04 of these regulations.

5.13.3 As used in paragraphs 5.13.1 through 5.13.3 of this section, the term regular high school diploma does not include an alternative degree that is not fully aligned with the State's academic standards, such as a certificate or a general educational development credential (GED).

5.14 PROHIBITION ON MANDATORY MEDICATION

5.14.1 General. The SEA must prohibit State and LEA personnel from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) for a child as a condition of attending school, receiving an evaluation under 34 CFR 300.300 through 300.311, or receiving services under Part B of the IDEA.

5.14.2 Rule of construction. Nothing in this section shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under 34 CFR 300.111 (related to child find).

DRAFT

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY Arkansas Department of Education
DIVISION Learning Services
DIVISION DIRECTOR Stacy Smith
CONTACT PERSON Mary Claire Hyatt, Staff Attorney
ADDRESS Four Capitol Mall, Little Rock, AR 72201
PHONE NO. (501) 683-0960 FAX NO. None E-MAIL Maryclaire.hyatt@arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Mary Claire Hyatt
PRESENTER E-MAIL MaryClaire.Hyatt@arkansas.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question **completely** using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

- *****
- 1. What is the short title of this rule? Special Education and Related Services, Section 2.00 Definitions and Section 5.00 Free and Appropriate Public Education (FAPE)
 - 2. What is the subject of the proposed rule? Free and Appropriate Public Education for Special Education
 - 3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No
If yes, please provide the federal rule, regulation, and/or statute citation. N/A
 - 4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes No
If yes, what is the effective date of the emergency rule? N/A
When does the emergency rule expire? N/A

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act?

Yes No

5. Is this a new rule? Yes No
If yes, please provide a brief summary explaining the regulation. _____

Does this repeal an existing rule? Yes No
If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. _____

- Is this an amendment to an existing rule? Yes No
If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."** See attached summary.

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Ark. Code Ann. §§ 6-11-105, 6-41-205, and 25-15-201 et seq., and Act 874 of 2017.

7. What is the purpose of this proposed rule? Why is it necessary? To incorporate provisions of Act 874 of 2017.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). <http://www.arkansased.gov/divisions/legal/rules>

9. Will a public hearing be held on this proposed rule? Yes No
If yes, please complete the following:

Date: August 29, 2018

Time: 1:30 pm

Arkansas Department of Education
Four Capitol Mall, Auditorium

Place: Little Rock, AR 72201

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)
September 17, 2018

11. What is the proposed effective date of this proposed rule? (Must provide a date.)
Estimated November 2018

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. Attached.

13. Please provide proof of filing the rule with the Secretary of State and the Arkansas State Library as required pursuant to Ark. Code Ann. § 25-15-204(e).

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known. The rules will be of interest to parents, community organizations, education service cooperatives, school administrators, special education coordinators and school district administrators.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Education

DIVISION Learning Services

PERSON COMPLETING THIS STATEMENT Mary Claire Hyatt, Staff Attorney

TELEPHONE 501-683-0960 **FAX** None **EMAIL:** Maryclaire.hyatt@arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Special Education and Related Services, Section 2.00 Definitions and Section 5.00 Free and Appropriate Public Education (FAPE)

- 1. Does this proposed, amended, or repealed rule have a financial impact? Yes No
- 2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes No
- 3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If an agency is proposing a more costly rule, please state the following:

(a) How the additional benefits of the more costly rule justify its additional cost;
N/A

(b) The reason for adoption of the more costly rule;
N/A

(c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;
N/A

(d) Whether the reason is within the scope of the agency’s statutory authority; and if so, please explain.
N/A

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

(a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

Next Fiscal Year

General Revenue N/A

Federal Funds _____

Cash Funds _____

Special Revenue _____

Other (Identify) _____

Total N/A

General Revenue N/A

Federal Funds _____

Cash Funds _____

Special Revenue _____

Other (Identify) _____

Total N/A

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue N/A
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total N/A

Next Fiscal Year

General Revenue N/A
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total N/A

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$ Zero

Next Fiscal Year

\$ Zero

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ _____

Zero

Next Fiscal Year

\$ _____

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.